

BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

IN RE:	McKendree Village, Inc.)	
	Map 075-00-0, Parcel 42.00)	Davidson County
	Map 075-06-0, Parcel 151.00)	
	Commercial Property)	
	Tax years 2005, 2006)	

INITIAL DECISION AND ORDER

Statement of the Case

The State Board of Equalization received appeals on behalf of the taxpayer for tax year 2005 on September 16, 2005 and tax year 2006 on September 11, 2006. The subject properties are valued for both tax years as follows:

Parcel 42.00

LAND VALUE	IMPR. VALUE	TOTAL VALUE	ASSESSMENT
\$598,000	\$2,839,300	\$3,437,300	\$1,374,920

Parcel 151.00

LAND VALUE	IMPR. VALUE	TOTAL VALUE	ASSESSMENT
\$322,000	\$1,293,200	\$1,615,200	\$646,080

These matters were reviewed by the undersigned administrative law judge pursuant to Tenn. Code Ann. §§ 67-5-1412, 67-5-1501 and 67-5-1505 and were consolidated for writing the Initial Decision and Order. The hearing was conducted at the Office of the Davidson County Property Assessor on July 12, 2007. Present at the hearing were John (Jay) Catignani, registered agent for the taxpayer; Attorney Joseph Gibbs of Boulton, Cummings, Conners, Berry, LLC, counsel for the taxpayer; Nellie Ward Cole, Chief Financial Officer for the taxpayer; Mary Ann Wales, President and Chief Executive Officer for the taxpayer; Attorney Margaret Darby, Metropolitan Legal Department; and Dean Lewis, from the Davidson County Assessor's Office.

Findings of Fact and Conclusions of Law

The subject properties are currently classified as "commercial" property¹. Parcel 42.00 has twenty-six (26) single family residences located on 10.43 acres. Parcel 151.00 has fourteen (14) single family residences located on 5.08 acres of land. The properties are located in Hermitage, Tennessee and have common addresses as 4336 Andrew Jackson Parkway and 15 Asbury Lane, respectively.

The taxpayer does not disagree about the value of the properties, but does disagree about the classification of the properties. Prior to tax year 2005, the subject properties were classified as "residential" units having an assessment ratio of twenty-five percent (25%). With the current

¹The primary issue of this appeal.

classification being “commercial”, the properties have an assessment ratio of forty percent (40%). Tenn. Code Ann. § 67-5-801, et. seq.

Attorney Darby argues, on behalf of the Assessor, that the properties were correctly classified by the County Board of Equalization and the ratios should not be changed. To support this contention, Attorney Darby quotes TCA § 67-5-501(4), which states that property “used, or held for use, for dwelling purposes that contains two (2) or more rental units” is considered commercial property.

McKendree Village is a retirement community that is more than thirty (30) years old. The first “cottage” was built by the initial resident in 1963. The arrangement is that the “resident” is financially responsible for the building of the cottage/home within certain parameters approved by a Board of Directors for McKendree Village, who owns the land. The resident then has the ability to live in the home until he or she either dies or their health deteriorates to the point that they are no longer able to live on their own.² The actual “building” of the last cottage was completed in 1989 so there are currently no more construction sites available. Those persons wishing to live in McKendree Village must “purchase” the right to live in the cottage/home. Attorney Gibbs and Mr. Catignani argue that the subject properties should be deemed “residential” and taxed accordingly for the following reasons:

1. The residents are able to live in the cottages/homes for their lifetimes.
2. The residents live in the structures that were either built by them or individuals before them.
3. The cottages/homes are constructed so that one family unit can stay in each structure, supporting the position that the structures are single family residences.

Several examples of the resident contracts or use agreements were shown in an attempt to prove that “ownership” is with the individual or resident, not with the entity, McKendree Village.

It appears that, at the heart of the matter, is the term “ownership” and all that it entails. Attorney Darby argues that the residents merely rent the cottages/homes and that true ownership is with McKendree Village. Therefore, according to Attorney Darby, under the existing case law, the property is a commercial enterprise. *Spring Hill, L.P. v. Tennessee State Board of Equalization*, No. M2001-02683-COA-R3-CV, 2003 Tenn. App. LEXIS 952, 2003 WL 23099679 (Tenn. Ct. App. Dec. 31, 2003).

Ownership has been defined as “the holding of rights or interests in real estate”.³ The individual rights to real estate include the rights to occupy the real estate, “to sell it, to lease it, to enter it, to give it away, to borrow against it, or to exercise more than one or none of these rights”. Appraising Residential Properties, 4th Ed., Appraisal Institute, 2007. [Emphasis Supplied].

Upon careful analysis of the current situation, it seems the individual or resident only has the right to occupy the cottage/homes for a specific period of time. The resident does not enjoy any of the other bundle of rights. Once the property is vacated, McKendree Village is the entity that enjoys the “financial appreciation” of the property’s value, something that is usually associated with property ownership.

²McKendree also has assisted care and nursing home facilities on the campus and residents are able to move to other facilities if necessary.

³The Dictionary of Real Estate Appraisal, 4th Ed., Appraisal Institute, 2002.

In *First American National Bank Building Partnership*, (Davidson Co., Tax Years 1984-1987), the Assessment Appeals Commission ruled that it is “the **entire fee simple** unencumbered value and not any lesser or partial interests” which is normally the subject of taxation. Final Decision and Order at p.3. [Emphasis Supplied].

The primary issue is the classification of the property as of January 1, 2005 and January 1, 2006. Since the taxpayer is appealing from the determination of the Davidson County Board of Equalization, the burden of proof is on the taxpayer. See State Board of Equalization Rule 0600-1-.11(1) and *Big Fork Mining Company v. Tennessee Water Control Board*, 620 S.W. 2d 515 (Tenn. App. 1981). In this type of an appeal, the petitioner must show, by a preponderance of the evidence, that an allegation is true or that the issue should be resolved in favor of that party. Uniform Rules of Procedure for Hearing Contested Cases. Rule 1360-4-1-.02 (7).

With respect to the issue of this appeal, classification, I find that Attorney Gibbs did not introduce sufficient evidence to persuade the Administrative Judge that the property is inappropriately classified as of January 1, 2005 and January 1, 2006, the relevant assessment dates pursuant to Tenn. Code Ann. § 67-5-504(a).

Order

It is therefore ORDERED that the following value and assessment be adopted for tax years 2005 and 2006:

Parcel 42.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$598,000	\$2,839,300	\$3,437,300	\$1,374,920

Parcel 151.00

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
\$322,000	\$1,293,200	\$1,615,200	\$646,080

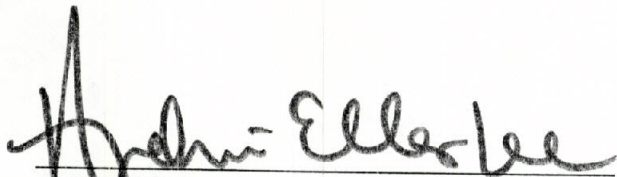
Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal “**must be filed within thirty (30) days from the date the initial decision is sent.**” Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal “**identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order**”; or

2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 17th day of October, 2007.



ANDREI ELLEN LEE
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Joseph Gibbs, Attorney, Boulton, Cummings, Connors, Berry, LLC
John O. Catignani, Property Tax Consultant
Metropolitan Attorney Jenny L. Hayes
Jo Ann North, Davidson County Assessor of Property

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